U.S. Extrusions & Steel Corp. *and* United Steelworkers of America, AFL–CIO, CLC, Local Union 4564-06. Cases 8–CA–32684 and 8–CA–32833

May 13, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the complaint. United Steelworkers of America, AFL–CIO, CLC, Local Union 4564-06, the Union, filed the charge in Case 8–CA–32684 on August 20, 2001. The Union filed the charge and amended charge in Case 8–CA–32833 on October 10 and December 18, 2001, respectively. Upon these charges, the General Counsel issued the Order consolidating cases, consolidated complaint and notice of hearing on January 31, 2002, against U.S. Extrusions & Steel Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 7, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On March 11, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that, unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 20, 2002, notified the Respondent that, unless an answer was received by February 27, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation, with an office and place of business in Girard, Ohio, has been engaged in the manufacture of tools and dies. Annually, the Respondent, in conducting its business operations described above, sells and ships from its Girard, Ohio facility goods valued in excess of $50,000 directly to points outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production, maintenance and non-confidential clerical employees employed by the Employer at its 1110 Trumbull Avenue, Girard, Ohio facility, including lay-out men, lathe operators, mill operators/solid, hollow die men, hollow die grinders, mill solid and hollow die, flox (EDM), heat treat, 3rd class machinists, 3rd class lathe operators, CNC lathe operators, wiremen, programmers, utility employees, and laborers, but excluding confidential employees, and all professional employees, guards and supervisors as defined in the Act.

Since about August 15, 1998, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements between the Union and the Respondent, the most recent of which was effective from August 15, 1998, to August 15, 2001. At all times since August 15, 1998, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about August 14 and 15, 2001, the Respondent and the Union met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment of the unit. Since August 15, 2001, the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

During the period August 14, 2001, to January 31, 2002, the Respondent engaged in the following conduct:

> i. regressive bargaining during negotiations on August 14 and 15, 2001;
>
> ii. demanded significant concessions in a *"take it or leave it"* manner;

iii. refused to respond to additional requests for bargaining; and

iv. through it[s] agent, Papiernik, stated that, *"it saw no need for a union at the plant"* and *"its employees did not want a union."*

Since about May 3, 2001, the Union, by letter, has requested that the Respondent furnish it with the following information:

i. The premium cost of pension benefits for Unit employees;

ii. The amount paid into the pension program annually since the previous negotiations; and

iii. The total amount of money presently held in the pension fund.

This information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about May 3, 2001, the Respondent has failed and refused to furnish the Union with the information.

Since about August 20, 2001, the Union, by letter, has requested that the Respondent furnish it with the information described in exhibit A to the complaint. This information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since August 20, 2001, the Respondent has failed and refused to furnish the Union with the information.

Sometime around September 21, 2001, the exact date being unknown, the Respondent unilaterally and unlawfully changed the unit employees' health insurance benefits. Sometime around September 21, 2001, the exact date being unknown, the Respondent unilaterally and unlawfully eliminated the unit employees' sickness and accident benefits. These subjects relate to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and its effects on the unit.

By its overall conduct, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. By failing and refusing since about August 15, 2001, to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(2), (6), and (7) of the Act.

2. By its overall conduct, including the conduct listed below during the period August 14, 2001, to January 31, 2002, the Respondent has failed and refused to bargain in good faith with the Union and thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(2), (6), and (7) of the Act:

i. regressive bargaining during negotiations on August 14 and 15, 2001;

ii. demanding significant concessions in a *"take it or leave it"* manner;

iii. refusing to respond to additional requests for bargaining; and

iv. through it[s] agent, Papiernik, stating that, *"it saw no need for a union at the plant"* and *"its employees did not want a union."*

3. By failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, its duties as the exclusive collective-bargaining representative of the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(2), (6), and (7) of the Act.

4. By unilaterally changing the unit employees' health insurance benefits, and unilaterally eliminating the unit employees' sickness and accident benefits, without giving the Union notice and an opportunity to bargain, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(2), (6), and (7) of the Act.

5. By failing and refusing by its overall conduct to bargain collectively and in good faith with the Union, the Respondent has been engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully failed and refused to meet and bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of the unit, we shall order the Respondent on request to do so. Having found that the Respondent unlawfully failed and refused to furnish the Union with the information it requested on May 3 and August 20, 2001, we shall order the Respondent to provide the Union with this information. Further, having found that the Respondent unlawfully changed the unit employees' health benefits and unlawfully eliminated their sickness and accident benefits, we shall order the Respondent to rescind these actions and make whole the unit employees

for any expenses resulting from the Respondent's actions, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, U.S. Extrusions & Steel Corp., Girard, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with United Steelworkers of America, AFL–CIO, CLC, Local Union 4564-06 on terms and conditions of employment of employees in the following bargaining unit:

> All full-time and regular part-time production, maintenance and non-confidential clerical employees employed by the Employer at its 1110 Trumbull Avenue, Girard, Ohio facility, including lay-out men, lathe operators, mill operators/solid, hollow die men, hollow die grinders, mill solid and hollow die, flox (EDM), heat treat, 3rd class machinists, 3rd class lathe operators, CNC lathe operators, wiremen, programmers, utility employees, and laborers, but excluding confidential employees, and all professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to bargain in good faith with the Union by engaging in regressive bargaining during negotiations, demanding significant concessions in a *"take it or leave it"* manner, refusing to respond to the Union's additional requests for bargaining; and stating, that it sees no need for a union at the plant and its employees do not want a union.

(c) Failing and refusing to provide the Union with requested information that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(d) Unilaterally changing the bargaining unit employees' health insurance benefits, and unilaterally eliminating the unit employees' sickness and accident benefits, without giving the Union notice and an opportunity to bargain.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive representative of the employees in the bargaining unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish the Union in a timely manner with the information it requested on May 3 and August 20, 2001.

(c) Rescind the unilateral changes to the bargaining unit employees' health benefits and the unilateral elimination of their sickness and accident benefits, and make whole the employees for any expenses resulting from these unilateral actions, with interest as described in the remedy section of this Decision and Order.

(d) Within 14 days after service by the Region, post at its facility in Girard, Ohio, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 3, 2001.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 13, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Chose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain in good faith with United Steelworkers of America, AFL–CIO, CLC, Local Union 4564-06 on terms and conditions of employment of employees in the following bargaining unit:

All full-time and regular part-time production, maintenance and non-confidential clerical employees employed by us at our 1110 Trumbull Avenue, Girard, Ohio facility, including lay-out men, lathe operators, mill operators/solid, hollow die men, hollow die grinders, mill solid and hollow die, flox (EDM), heat treat, 3rd class machinists, 3rd class lathe operators, CNC lathe operators, wiremen, programmers, utility employees, and laborers, but excluding confidential employees, and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain in good faith with the Union by engaging in regressive bargaining, demanding significant concessions in a "*take it or leave it*" manner, refusing to respond to the Union's additional requests for bargaining, or stating that we do not need a union or that you do not want a union at the plant.

WE WILL NOT fail and refuse to provide the Union with information that is necessary and relevant to its role as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT unilaterally change your health benefits or eliminate your sickness and accident benefits without giving the Union notice and an opportunity to bargain.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain in good faith with the Union as the exclusive representative of the employees in the bargaining unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL furnish the Union with the information it requested on May 3 and August 20, 2001.

WE WILL rescind the unilateral changes we made to your health benefits and our unilateral elimination of your sickness and accident benefits, and make you whole for any expenses resulting from these unilateral actions, with interest.

U.S. EXTRUSIONS & STEEL CORP.